

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTONIO VARGAS,

Plaintiff,

v.

9:22-CV-0862
(GLS/ATB)

C.O. KESSLER et al.,

Defendants.

APPEARANCES:

ANTONIO VARGAS
Plaintiff, Pro Se
21-B-0003
Five Points Correctional Facility
Caller Box 119
Romulus, NY 14541

GARY L. SHARPE
Senior United States District Judge

DECISION and ORDER

Plaintiff Antonio Vargas commenced this action by filing a pro se complaint for relief pursuant to 42 U.S.C. § 1983, together with an application to proceed in forma pauperis. Dkt. No. 1 ("Compl."); Dkt. No. 2 ("IFP Application"). Presently before the Court is a letter from plaintiff addressed to the Honorable Andrew T. Baxter, the assigned Magistrate Judge in this case, wherein he states, in pertinent part, as follows: "I Antonio Vargas is not going further with the case 9:22-CV-00862-GLS-ATB Vargas vs Kessler et al and the case 9:22-CV-00888-TJM-ATB Vargas vs Bradford et al so please drop the cases." Dkt. No. 11.

The Court construes plaintiff's letter as a notice of dismissal of this action pursuant to

Rule 41(a)(1) of the Federal Rules of Civil Procedure, which states, in relevant part, as follows: "[A] plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Because none of the defendants in this case have answered the complaint or moved for summary judgment, plaintiff was entitled to voluntary dismissal of this action without prejudice, without further order of the court, upon the filing of his notice of dismissal.

In light of the foregoing, upon the filing of plaintiff's notice requesting to withdraw this action, this action was dismissed, without prejudice, and an order of the court was not required in order to implement that dismissal.

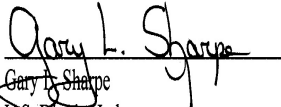
WHEREFORE, it is hereby

ORDERED that, in accordance with plaintiff's notice (Dkt. No. 11) to voluntarily dismiss this action, the Clerk of Court shall close this case and reflect that the action is voluntarily dismissed without prejudice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure; and it is further

ORDERED that the Clerk of Court shall serve plaintiff with a copy of this Decision and Order, along with a copy of his notice (Dkt. No. 11).

IT IS SO ORDERED.

January 27, 2023
Albany, New York


Gary L. Sharpe
U.S. District Judge